IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.7219 of 2004

1. Smt.Alka Shivram Pokharkar
and others ..Petitioners

vs.

1. The State of Maharashtra
and others ..Respondents

Shri N.V.Bandivadekar for petitioners
Shri R.D.Rane, Addl.G.P. for respondent no.1
Shri R.S.Apte for respondent no.2.

CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
13th December,2004

P.C.

1. Rule. Learned Counsel for the respondents waive service. By consent, rule is made returnable forthwith. Heard Advocates.

2. The petitioners are duly qualified to be appointed as Assistant Teachers and all of them have registered their names with Thane Employment Exchange. In the year 2001-2001 certain posts of Asstt.Teachers fell vacant in the secondary schools conducted by respondent no.2 Thane Municipal Corporation. In order to fill up these vacancies respondent no.2 appears to have sent requisition to Thane Employment Exchange as also to the office of the District Social Welfare Officer and the Project

Officer, Integrated Tribal Development Programme. The names of the petitioners were forwarded to respondent no.2 by the Employment Exchange and they were called for interview in July 2001. It appears that while the petitioners' names were processed for the posts of Asstt.Teacher. Govt. Resolution dated 13th January, 2000 was passed by the State of Maharashtra introducing the scheme of appointment of Shikshan Sevaks in the secondary schools run by the State Govt., local authorities and aided private schools. In short the scheme was that for the vacancies of teachers which arose after the issuance of the Govt.Resolution candidates will be appointed as Shikshan Sevaks for a period of 3 years and after successful completion of such period of 3 years they will be absorbed as teacher/Astt.Teacher on regular basis in the prescribed scale. The Govt. Resolution expressly provides that after completion of 3 years of service the right of absorption will be conferred on the candidate. It is not necessary to refer to other terms and conditions of the scheme save and except that the Govt.Resolution categorically provides that Shikshan Sevak shall be paid honorarium even in vacation time. As per the scheme Shikshan Sevak appointed in Secondary Schools is entitled to honorarium of Rs.4000/-

4. The petitioners though called for interview for the post of Asstt.Teacher they were ultimately appointed as Shikshan Sevaks in terms of the Govt.Resolution dated 13th January, 2000. All the petitioners have completed 3 years period. At this stage it is necessary to mention that there are two categories of schools run by Thane Municipal Corporation. The first category is known as aided category where the schools are run with the help of grant received from the State Govt. and other category is unaided schools where there is no aid from the State Govt. and the Corporation is running the school with its own funds. It appears that the petitioners were appointed in the aided schools of the Corporation and after completing 3 years instead of absorbing them in service as Asst.Teacher in accordance with the Scheme the Corporation shifted them to unaided school and again appointed them as Shikshan Sevaks for further tenure of 3 years. We are satisfied that the action of the Corporation is totally illegal and run counter to the scheme of Shikshan Sevaks framed by the State Govt. All the petitioners are entitled for absorption from the date of completion of 3 years service and their right of absorption cannot be defeated by simply transferring them from

aided section to unaided section. We, therefore, direct the respondent Corporation to absorb the petitioners in the post of Asstt.Teachers in the prescribed payscale with effect from the date on which the petitioners complete the period of 3 years and pay their salary as per the prescribed scale from the date on which they completed 3 years service. We accordingly make the rule absolute in terms of prayers (a), (b) and (c). The Corporation is directed to comply with this order within a period of 3 months from today.